

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHAEL HILL, et al.,)	CIVIL ACTION NO. 03-323 ERIE
Plaintiffs)	CIVIL ACTION NO. 03-355 ERIE
v.)	CIVIL ACTION NO. 03-368 ERIE
JOHN LAMANNA, et al.,)	CIVIL ACTION NO. 04-11 ERIE
Defendants)	CIVIL ACTION NO. 05-160 ERIE

STATUS CONFERENCE

Proceedings held before the HONORABLE
SEAN J. McLAUGHLIN, U.S. District Judge,
in Judge's Chambers, U.S. Courthouse, Erie,
Pennsylvania, on Friday, March 9, 2007.

APPEARANCES:

NEAL R. DEVLIN, Esquire, (via Phone), appearing
on behalf of the Plaintiffs.

MICHAEL C. COLVILLE, Assistant United States
Attorney, (via Phone), appearing on behalf of
the Defendants.

DOUGLAS S. GOLDRING, Assistant General Counsel,
(via Phone), appearing on behalf of the Federal
Bureau of Prisons.

Ronald J. Bench, RMR - Official Court Reporter

PROCEEDINGS

(Whereupon, the proceedings began at 11:00 a.m., on Friday, March 9, 2007, in Judge's Chambers.)

6 MR. COLVILLE: Mike Colville, let me patch everybody
7 in here. Your Honor?

8 THE COURT: I'm here.

9 MR. COLVILLE: We have Doug Goldring, your Honor,
10 counsel for the Bureau of Prisons.

11 THE COURT: Do we have Rich Lanzillo on the line?

12 MR. DEVLIN: This is Neal Devlin. Unfortunately,
13 Mr. Lanzillo is actually in the prison meeting with Michael
14 Hill, one of the clients. Since our clients have been
15 transferred to Erie, we no longer have to have conference calls
16 with him. He had hoped to meet with Michael Hill in an
17 attempt, quite frankly, to see if there was any possibility of
18 settling at the least the dental side of the claim. He had
19 hoped to get back. He must be detained in prison, your
20 Honor -- Mr. Lanzillo is not here.

21 THE COURT: Look it, I have gone through and
22 reviewed all of the objections and rather carefully have
23 reviewed this file. I just in no particular order of
24 importance want to raise some issues here. The first issue
25 involves the dental claim. I guess this would be directed to

1 Mr. Devlin. Do I have it right or is my recollection of the
2 record accurate that in connection with his exhaustion of his
3 FTCA dental claim, that he made a monetary demand of \$10,000?

4 MR. DEVLIN: That's correct, your Honor.

5 THE COURT: And would my assumption be correct that
6 under the statute, that by virtue of having made that demand,
7 he has locked himself into that damage claim?

8 MR. DEVLIN: Your Honor, we have not fully analyzed
9 that, we believe you are correct.

10 MR. GOLDRING: That's correct, your Honor.

11 THE COURT: Well, I simply raise it, I have not yet
12 ruled on the objections to the magistrate judge's denial of the
13 summary judgment motion insofar as the negligence claims are
14 concerned. I will tell you quite candidly I think it is more
15 likely than not that that claim is going to go forward. But
16 that said, I wanted to make sure everybody was on the same page
17 of the damage aspect of it. Because that might go a long way
18 toward -- let's go off the record here for a second.

19 (Discussion held off the record.)

20 THE COURT: Let's go back on the record now. I am
21 now shifting gears on to the silica part of these cases. This
22 question is directed to Mr. Devlin. My review of the record
23 indicates that while we have the reports of Dr. Fino, F-i-n-o,
24 we never did receive any expert medical reports, counter expert
25 medical reports or for that matter any medical reports at all

1 filed by the plaintiffs. My question to you is -- had you
2 retained a medical expert and had you intended to file a report
3 or reports or not?

4 MR. DEVLIN: Your Honor, we did retain a medical
5 expert. We forwarded to the medical expert all the records.
6 The medical expert indicated he required to see film. We then
7 coordinated with counsel for the defendant, who was to get the
8 films that were taken during the IMEs of the plaintiffs. We
9 got those down to our medical expert, quite frankly, after we
10 filed the motion for summary judgment, and I believe it took
11 him until either the same time or shortly after the report and
12 recommendation came out. We have been trying to contact our
13 medical expert to determine his review of those films. And he
14 has, we have simply been unable to do that for timing reasons.

15 One more issue on that, your Honor. It is with
16 respect to Kevin Siggers, I believe we made reference to this
17 at least in our summary judgment papers, if not in the
18 objection. Mr. Siggers has been released from prison. He's in
19 the Cleveland, Ohio area now. He has actually been admitted to
20 the hospital for certain problems, lesions were being found in
21 his throat and part of his respiratory tract. The timing on
22 this is unfortunate because we have not been able to get any
23 diagnosis from the doctors. What we are told is that they
24 don't even know what's wrong with him, much less what's causing
25 what's wrong with him. I believe he had some surgery last week

1 and a biopsy on some lesions to try and get a handle on what's
2 the matter. Your Honor's rendition of the record is accurate.
3 We have not filed a medical report. We are not in possession
4 of a medical report at this point in time. Which I do believe
5 is consistent with the magistrate judge's report and
6 recommendation, that's not fatal to our claim. But your Honor
7 is factually correct on the record.

8 THE COURT: All right. Given the nature of the
9 disposition of the magistrate judge, it wasn't fatal to your
10 claim?

11 MR. DEVLIN: Correct, other things were.

12 THE COURT: Other things were, that wasn't. So the
13 record is clear, though, I think you made it clear, Mr. Devlin,
14 it's accurate to say that you do not presently have in your
15 possession an expert report or reports relative to any of these
16 plaintiffs that diagnosis a silica related condition that is
17 caused by their exposure to silica dust while working at the
18 UNICOR facility?

19 MR. DEVLIN: We do not have that presently, that's
20 correct, your Honor.

21 THE COURT: And I suppose it would also be accurate
22 to say as you sit here today, you have no reasonable
23 expectation that you're going to receive such a report at any
24 time in the immediate future?

25 MR. DEVLIN: Your Honor, I would say that is

1 accurate with respect to all plaintiffs except Mr. Siggers.
2 Our problem with Mr. Siggers is, your Honor simply one that
3 medical professionals don't know what's wrong with him. On a
4 day-to-day basis we try to keep in contact as we can with the
5 doctors, although, at times it's difficult. We just don't know
6 when they're going to let us know what's wrong. We don't know
7 if what's wrong with him has anything to do with silica dust or
8 not, to be quite frank with your Honor. But it's just what's
9 been described to us as his problem, you know the medical
10 professionals say they cannot rule out anything at this point.
11 So with respect to Mr. Siggers, we have no idea when we will
12 learn what's wrong with him. With respect to the other
13 plaintiffs, we agree with your Honor we do not anticipate
14 receiving any more reports in the near future.

15 THE COURT: All right. Now, let me raise another
16 issue that was raised in the objection. Actually, it was a
17 little more front and center in the objections than it really
18 was in the plaintiffs' brief in opposition to defendants'
19 motion for summary judgment. That is the spoliation argument?

20 MR. DEVLIN: Yes, your Honor.

21 THE COURT: I took a look, I went back and took a
22 look at some of the case law on this. Interestingly enough,
23 maybe not interestingly -- but one of the cases that I looked
24 at, Brewer v. Quaker State, was a case many years ago I got
25 reversed on, but not on this point. The circuit was talking

1 about that doctrine -- let me just quote it and then I'll ask
2 my questions, it's really a record question. The circuit says
3 relative to the issue. "Further, it must appear that there has
4 been an actual suppression or withholding of the evidence. No
5 unfavorable inference arises when the circumstances indicate
6 that the document or article in question has been lost or
7 accidentally destroyed, or where the failure to produce it is
8 otherwise properly accounted for." Citing C.J.S. Evidence
9 sections, etc. Then the quote goes on, "such a presumption or
10 inference arises, however, only when the spoliation or
11 destruction of evidence was intentional, and indicates fraud
12 and a desire to suppress the truth, and it does not arise where
13 the destruction was a matter of routine with no fraudulent
14 intent."

15 Now, I'm going to swing over to Mr. Colville here
16 or, I apologize, who is the other counsel I have?

17 MR. GOLDRING: Mr. Goldring, your Honor.

18 THE COURT: Mr. Goldring. What if anything does the
19 record tell me as to the reason or reasons for or when the
20 decision was made for the conversion of the UNICOR facility
21 from a particleboard facility to whatever it ultimately was
22 turned into; that would have occurred in January of 2006, is
23 that right?

24 MR. GOLDRING: Your Honor, this is Mr. Goldring. I
25 believe this was discussed at Mr. Sapko and Mr. Housler's

1 deposition. And I don't recall off the top of my head exactly
2 when the decision was made. The decision was essentially made
3 in the way the materials were being shipped back and forth. It
4 just wasn't making sense to do these things at McKean anymore.
5 It wasn't making financial sense. It wasn't making sense from
6 a business standpoint. So the decision was made, I believe it
7 was somewhere in 2004. In 2004 they were going to start
8 looking at shifting those operations down to the Coleman
9 factory. Which was just a better shipping route for where the
10 materials were coming from and where these things were
11 typically going out. That was the main reason for starting to
12 look at conversion, it was just from a business and financial
13 operation. It wasn't making sense to make these kinds of
14 furniture goods in the McKean factory.

15 MR. COLVILLE: Your Honor, may I also add the
16 decision wasn't made by any of the individually named
17 defendants. This decision was not -- it wasn't their decision.
18 They played no role in it whatsoever.

19 THE COURT: In other words, the decision to convert
20 this factory wasn't made by any of the folks at FCI McKean, it
21 was made by higher-ups at the BOP?

22 MR. GOLDRING: Right, was maybe corporate management
23 when they took a look at the global list of what factories were
24 doing what. Whether a factory was being successful or not
25 successful. That is where the decisions are made and are at

1 our corporate headquarters -- whether to close a factory or
2 open a new factory or change a factory, those kinds of
3 decisions. Those decisions are not made at all the local
4 institution level.

5 THE COURT: All right. Then I guess to a certain
6 extent I'm giving everybody an opportunity to way in on this
7 one issue, I'm going to do that with Mr. Devlin now. Mr.
8 Devlin, in your papers you suggest that the spoliation doctrine
9 should kick in and inure to your benefit. I guess you suggest
10 that that doctrine in and of itself should have been sufficient
11 to cause you to survive summary judgment because you contend
12 the magistrate judge should have given you the benefit of an
13 inference that the level of contaminants at the facility was
14 such that it imposed an unreasonable health risk?

15 MR. DEVLIN: It is, your Honor.

16 THE COURT: I guess I have a number of questions on
17 that. If the elements to make out a viable spoliation argument
18 would be essentially, and this is true I think both under
19 Pennsylvania appellate law and Third Circuit law, the degree of
20 fault of the party who altered or destroyed the evidence; the
21 degree of prejudice suffered by the opposition party; and the
22 availability of a lesser sanction that will protect the
23 opposing party's rights and deter future similar conduct.
24 That just for the record is Schroeder v. Commonwealth of
25 Pennslyvania Department of Transportation, 710 A.2d 23 PA

1 (1998). Federal law is not dissimilar. In this particular
2 case isn't it true, at least I think it's true, the industrial
3 hygienist who would have been retained by the defendant, whose
4 name is escaping me -- was it White or something like that?

5 MR. DEVLIN: Weyel, I believe, your Honor. By the
6 defendants, yes, Mr. Weyel.

7 THE COURT: What was the date of Mr. Weyel's report,
8 does anyone know, roughly?

9 MR. COLVILLE: I don't have that at my disposal. It
10 was January, February.

11 MR. GOLDRING: End of January, I think.

12 THE COURT: Mr. Weyel generated a report without the
13 benefit of ever having toured the facility when it was working
14 as a particleboard facility, didn't he?

15 MR. COLVILLE: Correct.

16 THE COURT: I mean your expert, I'm talking to Mr.
17 Devlin -- your expert, Mr. Devlin, had access to the same
18 materials that Mr. Weyel had, didn't he?

19 MR. DEVLIN: He did, your Honor. Not to anticipate
20 the question --

21 THE COURT: You can anticipate it, that's all right.

22 MR. DEVLIN: Obviously, there is a difference here
23 in the burden. We did produce an expert's report. Our expert
24 was able to opine on a number of issues related to the OSHA
25 investigation. Which OSHA and Microbac are the only two

1 entities that investigated this facility at the point in time
2 when it was operational, at least relevantly operational to
3 this case. Our expert, along with Mr. Weyel, were able to
4 render opinions regarding the efficacy of that OSHA
5 investigation, whether or not it was accurate and whether or
6 not it properly described the condition. Our expert believes
7 it did not. Their expert believes it did. As the magistrate
8 judge's report, quite frankly, we believe correctly indicates,
9 our burden is more than simply poking holes in the OSHA
10 investigation. We acknowledge that we need to come forward
11 with more than that. We believe that we have successfully
12 created an issue of fact as to whether the OSHA investigation
13 or the Microbac investigation are accurate pictures of what
14 this factory looked like from a quality air perspective back
15 when it was in operation. Our problem comes from the fact in
16 order to sustain our burden, our expert would be required to do
17 more than what the defense experts would be. And, namely, to
18 come forward with a quantification of the amount of hazardous
19 material, be that from silica dust or in Locwelds in the air at
20 the facility. It's that requirement that causes the
21 disassembling, dismantling of the facility which causes major
22 prejudice to us.

23 THE COURT: What does the defendant say to the
24 plaintiffs' spoliation argument?

25 MR. COLVILLE: Let me chime in, Doug, as well.

1 Couple things. One, the plaintiffs' plant was up and running I
2 think during, at least the filing of these claims.

3 MR. GOLDRING: The plant was up and running part of
4 that.

5 MR. COLVILLE: They had access, after they filed the
6 complaint, to have an investigation done or to get whatever
7 information they thought they needed to support their claim.
8 The other thing is we believe there's sufficient evidence that
9 still survives. You know what the ventilation system, the
10 aspects of it are. The potential it had, how it operated. You
11 have a videotape from the OSHA investigation itself.

12 THE COURT: Which showed the plant in operation on a
13 couple of days, is that right?

14 MR. COLVILLE: Correct. You could see what was
15 going on. Like I said, the plant was running at a time when
16 they filed the lawsuit and were proceeding on whatever claims
17 they wanted to at that point. And, again, I think your initial
18 statements, your Honor, with regard to impressions, our people
19 had no role in the decision to remove, to change the plant over
20 to different manufacturing. There's no bad intent, no fraud,
21 none of the elements you mentioned earlier which rises to the
22 level of spoliation.

23 THE COURT: Let me see if I can complete our
24 discussion, start to bring it to a close here and ask Mr.
25 Devlin this. On the question of intent or fraud or bad faith

1 or ill will or an attempt to conceal to avoid ramifications of
2 a lawsuit, do you have any evidence that would suggest that
3 this decision was made by people other than whom I am told was
4 made here on this telephonic conference, that is the higher-ups
5 in the BOP, and secondarily was made exclusively for business
6 decisions based upon the apparent lack of the economic
7 productivity of the product they were manufacturing?

8 MR. DEVLIN: Your Honor, as to the first question,
9 no, we have no evidence as to who made that decision
10 whatsoever. Whether or not the warden did, I don't know if
11 Warden Lamanna would have been the warden when the decision was
12 made or not. Whether or not he would have had a say in it. We
13 don't have any evidence on that.

14 As to the second point, your Honor, circumstantially
15 this goes to I believe Mr. Colville's point as well, the fact
16 that these claims are pending from 2002, we submit, your Honor,
17 doesn't hurt our spoliation claim, in fact, it makes it more
18 clearer. The plaintiffs in the case, from both a procedural
19 perspective, could not have engaged in discovery until an
20 initial status conference, which didn't occur until after the
21 plant was dismantled. From a practical perspective, the
22 plaintiffs in this case weren't represented until 2005, late
23 2005, after the plant was dismantled. And as to this
24 circumstantial evidence, your Honor, regarding intent --

25 THE COURT: Hang on a second, when you entered an

1 appearance in this case, it would have been December of 2005?

2 MR. DEVLIN: Yes, your Honor.

3 THE COURT: All right. Let me ask Mr. Colville or
4 the representative of the BOP when was the plant dismantled?

5 MR. GOLDRING: Right around that same time, your
6 Honor.

7 THE COURT: Could it have been January of '06?

8 MR. GOLDRING: I don't have the exact date, it was
9 between November, November of '05 and January of '06, I don't
10 remember the exact date.

11 THE COURT: All right. I sorry, Mr. Devlin, I
12 interrupted you.

13 MR. DEVLIN: I will tell you, your Honor, the first
14 time we learned that the plant was dismantled was at the Rule
15 26 conference. I actually have a specific recollection of Mr.
16 Goldring in Magistrate Judge Baxter's chambers indicating to me
17 that the plant was no longer in operation. That is the first
18 time we received notice of that. It really gets to the heart
19 of the spoliation claim, your Honor. Had we've been given
20 notice at that point in time, where our clients, before our
21 involvement, had our clients been given notice that the plant
22 was being dismantled and had the opportunity to have an expert
23 come in and observe the plant with equipment running and to be
24 able to take actual ambient air samples and testing, we
25 wouldn't have a spoliation argument, we would have been in

1 there to protect our record. We were not given that notice.
2 We were not informed the plant was dismantled until after it
3 occurred. And, therefore, while there's no question a defense
4 expert has been able to opine yeah, it looks like the
5 ventilation system, everything was fine, the OSHA report is
6 good and our expert no, we don't think the ventilation system
7 necessarily was fine and we don't think the OSHA report is a
8 good report, our expert cannot take that next step and actually
9 give the court or the ultimate fact finder a number, say here
10 is the concentration of silica dust in the air at the UNICOR
11 operating at this and this capacity. That prejudice is what
12 led to our spoliation argument and we believe lack of notice
13 circumstantially satisfies the intent prong of that test.

14 THE COURT: Mr. Colville, were you about to say
15 something?

16 MR. COLVILLE: No, I think the court understands our
17 point.

18 THE COURT: Let me just make one other point. But
19 even if an inference were to require, even if this were an
20 appropriate case for the utilization of the doctrine, the most
21 it could do for you, wouldn't this be true, Mr. Devlin, would
22 raise an inference on the question of objective
23 unreasonableness of the condition of the plant. It would not
24 impact on the independent conclusion of the magistrate that the
25 subjective prong of Farmer had not been satisfied?

1 MR. DEVLIN: I agree with that, your Honor.

2 THE COURT: All right. And, finally, would you
3 agree with me that assuming that the record does not reflect
4 the type of fraudulent intent to destroy evidence so as to
5 avoid potential adverse effect in the lawsuit, if you don't
6 have that prong among the three in that spoliation setting, you
7 don't really get off the ground in a spoliation argument?

8 MR. DEVLIN: Your Honor, I would agree with that
9 with this caveat. That we believe that the evidence here does
10 support that prong. I agree if your Honor were to find there
11 was not the intent element on the spoliation doctrine, that the
12 failure of that prong would be detrimental to the argument.

13 THE COURT: Let me ask Mr. Colville this and the BOP
14 representative. Who is it, and I'm not sure it's necessary
15 that I'm going to require it, but who is it that could speak
16 conclusively to the issue as to the reason or reasons the plant
17 was dismantled and the timing of that?

18 MR. GOLDRING: We have a central office, it would
19 have been the chief administrative officer who is typically
20 responsible for those kinds of issues. We also have an
21 executive director who usually has information on those issues.
22 Either of them would probably be in a position to discuss with
23 the court exactly how this decision was made and who made that
24 decision.

25 THE COURT: All right. Only because everyone has

1 spent so much time on this case, I think appropriately so, it's
2 a big record. But just in the interests of making sure that
3 every "i" is dotted and every "t" is crossed, I feel the
4 instinctive need to tighten up the record on this one point.
5 I'm not going to require people -- where would this individual
6 be located, where is the administrative office?

7 MR. GOLDRING: Washington, D.C. Your Honor, I can
8 put together a declaration to describe how that decision came
9 about.

10 THE COURT: I think what I'm going to do -- you
11 can't cross-examine a declaration. What I am going to do is
12 I'm going to direct that you locate the person, I presume there
13 is such a person who would be in a position to speak
14 authoritatively to the facts and circumstances surrounding the
15 closing. Subject to everybody's availability, I'm presently
16 bringing my Deputy Clerk in and we're going to schedule a short
17 telephonic, for lack of a better term, it's going to be a
18 hearing where I'm going to ask the government to produce
19 testimony for the benefit or as to the reason or reasons for
20 the closure. Mr. Devlin will have an opportunity to
21 cross-examine, and then I'll be able to make a finding on the
22 record on this point. Because it strikes me as things
23 presently exist, it's just floating a bit in space. Is that
24 something you can accomplish in relatively short order?

25 MR. GOLDRING: Yes, your Honor. When should we have

1 that witness available?

2 THE COURT: As soon as my Deputy Clerk comes in,
3 I'll tell you. I would propose Monday afternoon at 2:30.

4 MR. COLVILLE: That works for me.

5 MR. GOLDRING: That's fine.

6 THE COURT: Mr. Devlin or Mr. Lanzillo will be
7 available for that?

8 MR. DEVLIN: I will be out of town, I believe Mr.
9 Lanzillo will be available.

10 THE COURT: As I said, limited to the issue I just
11 discussed, the facts and circumstances surrounding the closing
12 of that facility and the reasons for the closing of that
13 facility. Thank you, very much.

14 MR. DEVLIN: Your Honor, if I could raise one more
15 issue. And it's a scheduling issue, I apologize for raising
16 it. I just want to give the court as prompt notice as
17 possible. With the dental claim, I understand the court hasn't
18 made any rulings. In the event the magistrate judge's report
19 and recommendations are affirmed, thus the dental claim
20 survives and if we are unable to resolve the dental claim, I
21 did want to raise with the court this issue. Attorney Lanzillo
22 and I, quite frankly, your Honor, are double booked that entire
23 week of the 19th. We have a week long trial in Crawford
24 County, that the judge has been unwilling to move. We had a
25 case, a jury trial, we're trying to find a way to make it work

1 with the personnel here.

2 THE COURT: Which one got booked first?

3 MR. DEVLIN: The original case in Crawford County
4 case was booked first. The case has been booked probably for
5 about a year.

6 THE COURT: Who is it before?

7 MR. DEVLIN: It's before Judge Vardaro.

8 THE COURT: Did you ask him?

9 MR. DEVLIN: We have. It's been moved twice by
10 other counsel, your Honor.

11 THE COURT: I don't blame him for that.

12 MR. DEVLIN: We believe, if the objections aren't
13 sustained, the remaining claim would be a bench trial. And we
14 don't believe, although, I would obviously defer to Mr.
15 Colville, we don't believe it would take much more than one
16 day. I was wondering if there's any possibility to move that a
17 week, since we would no longer be needed to go pick a jury. I
18 would respectfully raise that issue with your Honor.

19 THE COURT: Do you mean to move it to the 26th?

20 MR. DEVLIN: Yes, your Honor. Quite frankly, any
21 time outside the week of the 19th would be fine.

22 THE COURT: We can do that.

23 MR. COLVILLE: My only problem is I'm out of town.

24 THE COURT: When?

25 MR. COLVILLE: The 21st through the 28th.

1 THE COURT: Put it this way, I try to make it habit
2 of not ruining people's travel plans.

3 MR. COLVILLE: I'm more than willing to allow, if
4 all we're talking about is the tort claim on the dental claim,
5 I have no problem with Judge Baxter handling the matter. If
6 that's the solution, I have no problem moving it to any other
7 day, any other day than the 21st through the 28th.

8 THE COURT: Let's go of the record here.

9 (Discussion held off the record.)

10 THE COURT: All right. The court having de novo
11 reviewed the magistrate judge's report and recommendation
12 relative to the dental aspect of this case, I am adopting it as
13 the opinion of the court. That's number one. There will be a
14 written order to that effect. Number two, I'm informed by Mr.
15 Colville that the government is willing to consent to the
16 jurisdiction of the magistrate judge for all further purposes
17 on the dental claim of Mr. Michael Hill. That's fine.

18 MR. COLVILLE: Just for the purpose only of the FTCA
19 portion of Michael Hill's claim.

20 THE COURT: Only for the FTCA portion. I presume
21 what will happen is the magistrate judge, if her time slot
22 permits, will probably have the pretrial conference scheduled
23 for Wednesday remain the same or she may change it, that's up
24 to her. One thing we couldn't do, is you won't get taken to
25 trial either during the week that you have a problem, Mr.

1 Devlin, or during your travel time, Mr. Colville.

2 MR. COLVILLE: Thank you, your Honor.

3 MR. DEVLIN: Thank you, your Honor.

4 THE COURT: Let me put you on hold for one second.

5 (Off the Record.)

6 THE COURT: We're back. I think that's pretty much
7 it. Except to say I can guarantee you that somebody will be
8 contacting you from the magistrate judge's office. I have
9 Cindy with me right now from Magistrate Judge Baxter's. Mr.
10 Colville, did say you're back in the office on the 28th?

11 MR. COLVILLE: I'm returning to Pittsburgh the 28th,
12 I'll be back in the office on the 29th.

13 THE COURT: Let me throw out a couple other
14 potential dates here. Assuming this thing goes to trial, do
15 you all agree this will be done in a day, kind of looks that
16 way to me?

17 MR. COLVILLE: Two experts, and we would call the
18 doctor and maybe the two dental assistants.

19 MR. DEVLIN: I believe, at least our expert is going
20 to be done by video, is that right, beforehand.

21 MR. COLVILLE: Let me make sure we're all good with
22 that. Presently, your Honor, Neal, I've scheduled the
23 videotaped deposition of our expert for Friday, March 16th,
24 assuming this case was going to trial on the 19th. Depending
25 on what the court orders here, that may all change. But I

1 wanted to make sure Neal is fine with that and Rich is fine
2 with that, given the fact we're going to trial that following
3 Monday.

4 THE COURT: Let me ask you this. Would you be able
5 to move the videotaped deposition of the expert to the 15th?

6 MR. COLVILLE: No, I'm not able to, your Honor.

7 THE COURT: In any event, it doesn't matter, once
8 it's in the can, it's in the can. The magistrate judge can
9 play it without anybody there, I suppose. All right. I think
10 that's about all we can do today.

11 (Discussion held off the record.)

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13 (Whereupon, at 11:44 a.m., the proceedings were
14 concluded.)

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5 I, Ronald J. Bench, certify that the foregoing is a
6 correct transcript from the record of proceedings in the
7 above-entitled matter.

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Ronald J. Bench

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